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14

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
17

18 EVOLV HEALTH, LLC and
19 EVOLVHEALTH MEXICO
20 SERVICIOS, S. de R.L. de C.V.,
21

22 Plaintiffs,
23

24 v.
25

26 COSWAY USA, INC., d/b/a
27 ECOSWAY USA, INC., GLEN
28 JENSEN, JEFFREY N. ALDOUS and
VINCENT TAN,

Defendants and Does 1-10.

Case No. 2:16-cv-01602-ODW(ASx)

STIPULATED PROTECTIVE
ORDER

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting or defending this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to

1 enter the following Stipulated Protective Order. The parties acknowledge that this
2 Order does not confer blanket protections on all disclosures or responses to discovery
3 and that the protection it affords from public disclosure and use extends only to the
4 limited information or items that are entitled to confidential treatment under the
5 applicable legal principles. The parties further acknowledge, as set forth in Section
6 12.3, below, that this Stipulated Protective Order does not entitle them to file
7 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
8 that must be followed and the standards that will be applied when a party seeks
9 permission from the court to file material under seal.

10 **1.2 GOOD CAUSE STATEMENT**

11 This action involves alleged trade secrets, customer and pricing lists, research,
12 commercial information, financial records, technical and/or proprietary information
13 for which special protection from public disclosure and from use for any purpose
14 other than prosecution or defense of this action is warranted. Such materials and
15 information consist of, among other things, allegedly confidential business or
16 financial information, research and development records, or commercial information
17 (including information implicating privacy rights of third parties), which may be
18 privileged or otherwise protected from disclosure under state or federal statutes, court
19 rules, case decisions, or common law. Accordingly, to expedite the flow of
20 information, to facilitate the prompt resolution of disputes over confidentiality of
21 discovery materials, to adequately protect information the parties are entitled to keep
22 confidential, to ensure that the parties are permitted reasonably necessary uses of such
23 material in preparation for and in the conduct of trial, to address their handling at the
24 end of the litigation, and serve the ends of justice, a protective order for such
25 information is justified in this matter. It is the intent of the parties that information
26 will not be designated as confidential or attorneys eyes only for tactical reasons and
27 that nothing be so designated without a good faith belief that it has been maintained in
28 a confidential, non-public manner, and there is good cause why it should not be part of

1 the public record of this case.

2 **2. DEFINITIONS**

3 2.1 Action: *Evolv Health, LLC and Evolvhealth Mexico Servicios, S. de R.L.*
4 *de C.V.*, Plaintiffs v. *Cosway USA, Inc., d/b/a Ecosway USA, Inc., Glen Jensen,*
5 *Jeffrey N. Aldous and Vincent Tan*, Defendants, United States District Court for the
6 Central District of California, Western Division, Case No. 2:16-cv-01602(ODW).

7 2.2 Challenging Party: a Party or Non-Party that challenges the designation
8 of information or items under this Order.

9 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for protection
11 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
12 Cause Statement.

13 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
14 support staff).

15 2.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

18 2.6 Disclosure or Discovery Material: all items or information, regardless of
19 the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.

22 2.7 “ATTORNEYS EYES ONLY” Information or Items: information
23 (regardless of how it is generated, stored or maintained) or tangible things that qualify
24 for protection under Federal Rule of Civil Procedure 26(c), as specified above in the
25 Good Cause Statement, and is of a commercially sensitive nature.

26 2.8 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
28 expert witness or as a consultant in this Action.

1 2.9 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.10 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.11 Outside Counsel of Record: attorneys who are not employees of a party
7 to this Action but are retained to represent or advise a party to this Action and have
8 appeared in this Action on behalf of that party or are affiliated with a law firm which
9 has appeared on behalf of that party, and includes support staff.

10 2.12 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.14 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.15 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

21 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.

23 **3. SCOPE**

24 The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above), but also (1) any information copied or extracted
26 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
27 Protected Material; and (3) any testimony, conversations, or presentations by Parties
28 or their Counsel that might reveal Protected Material.

1 Any use of Protected Material at trial shall be governed by the orders of the trial
2 judge. This Order does not govern the use of Protected Material at trial.

3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition shall be
7 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
8 or without prejudice; and (2) final judgment herein after the completion and
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
10 including the time limits for filing any motions or applications for extension of time
11 pursuant to applicable law.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

14 Each Party or Non-Party that designates information or items for protection under this
15 Order must take care to limit any such designation to specific material that qualifies
16 under the appropriate standards. The Designating Party must designate for protection
17 only those parts of material, documents, items, or oral or written communications that
18 qualify so that other portions of the material, documents, items, or communications
19 for which protection is not warranted are not swept unjustifiably within the ambit of
20 this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations
22 that are shown to be clearly unjustified or that have been made for an improper
23 purpose (e.g., to unnecessarily encumber the case development process or to impose
24 unnecessary expenses and burdens on other parties) may expose the Designating Party
25 to sanctions.

26 If it comes to a Designating Party's attention that information or items that it
27 designated for protection do not qualify for protection, that Designating Party must
28 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) For information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”) or the legend
11 “ATTORNEYS EYES ONLY” (hereinafter “ATTORNEYS EYES ONLY legend”),
12 to each page that contains protected material. If only a portion or portions of the
13 material on a page qualifies for protection, the Producing Party also must clearly
14 identify the protected portion(s) (e.g., by making appropriate markings in the
15 margins).

16 A Party or Non-Party that makes original documents available for inspection
17 need not designate them for protection until after the inspecting Party has indicated
18 which documents it would like copied and produced. During the inspection and before
19 the designation, all of the material made available for inspection shall be deemed
20 “ATTORNEYS EYES ONLY.” After the inspecting Party has identified the
21 documents it wants copied and produced, the Producing Party must determine which
22 documents, or portions thereof, qualify for protection under this Order. Then, before
23 producing the specified documents, the Producing Party must affix the
24 “CONFIDENTIAL” legend or the “ATTORNEYS EYES ONLY” legend to each page
25 that contains Protected Material.

26 (b) For testimony given in depositions that the Designating Party
27 identify the Disclosure or Discovery Material on the record, before the close of the
28 deposition all protected testimony.

(c) For information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL” or the legend “ATTORNEYS EYES ONLY.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37-1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party’s designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this

1 Action only for prosecuting, defending, or attempting to settle this Action. Such
2 Protected Material may be disclosed only to the categories of persons and under the
3 conditions described in this Order. When the Action has been terminated, a Receiving
4 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
11 only to:

12 (a) The Receiving Party’s Outside Counsel of Record in this Action,
13 as well as employees of said Outside Counsel of Record to whom it is reasonably
14 necessary to disclose the information for this Action;

15 (b) The officers, directors, and employees (including House Counsel)
16 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

17 (c) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) The court and its personnel;

21 (e) Court reporters and their staff;

22 (f) Professional jury or trial consultants, mock jurors, and Professional
23 Vendors to whom disclosure is reasonably necessary for this Action and who have
24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (g) The author or recipient of a document containing the information
26 or a custodian or other person who otherwise possessed or knew the information;

27 (h) During their depositions, witnesses, and attorneys for witnesses, in
28 the Action to whom disclosure is reasonably necessary provided: (1) the deposing

1 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they
 2 will not be permitted to keep any confidential information unless they sign the
 3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
 4 by the Designating Party or ordered by the court. Pages of transcribed deposition
 5 testimony or exhibits to depositions that reveal Protected Material may be separately
 6 bound by the court reporter and may not be disclosed to anyone except as permitted
 7 under this Stipulated Protective Order; and

8 (i) Any mediator or settlement officer, and their supporting personnel,
 9 mutually agreed upon by any of the parties engaged in settlement discussions.

10 7.3 Disclosure of “ATTORNEYS EYES ONLY” Information or Items.

11 Unless otherwise ordered by the court or permitted in writing by the Designating
 12 Party, a Receiving Party may disclose any information or item designated
 13 “ATTORNEYS EYES ONLY” only to persons described in subparagraphs 7.2(a), (c),
 14 (d), (e), (f), (g), and (i).

15 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED** 16 **IN OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation
 18 that compels disclosure of any information or items designated in this Action as
 19 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY,” that Party must:

20 (a) promptly notify in writing the Designating Party (such notification
 21 shall include a copy of the subpoena or court order),

22 (b) promptly notify in writing the party who caused the subpoena or
 23 order to issue in the other litigation that some or all of the material covered by the
 24 subpoena or order is subject to this Protective Order (such notification shall include a
 25 copy of this Stipulated Protective Order), and

26 (c) cooperate with respect to all reasonable procedures sought to be
 27 pursued by the Designating Party whose Protected Material may be affected.

28 If the Designating Party timely seeks a protective order, the Party served with

1 the subpoena or court order shall not produce any information designated in this
2 action as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” before a
3 determination by the court from which the subpoena or order issued, unless the Party
4 has obtained the Designating Party’s permission. The Designating Party shall bear the
5 burden and expense of seeking protection in that court of its confidential material and
6 nothing in these provisions should be construed as authorizing or encouraging a
7 Receiving Party in this Action to disobey a lawful directive from another court.

8 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
9 **PRODUCED IN THIS LITIGATION**

10 (a) The terms of this Order are applicable to information produced by
11 a Non-Party in this Action and designated as “CONFIDENTIAL” or “ATTORNEYS
12 EYES ONLY.” Such information produced by Non-Parties in connection with this
13 litigation is protected by the remedies and relief provided by this Order. Nothing in
14 these provisions should be construed as prohibiting a Non-Party from seeking
15 additional protections.

16 (b) In the event that a Party is required, by a valid discovery request,
17 to produce a Non-Party’s confidential information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party’s
19 confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the
21 Non-Party that some or all of the information requested is subject to a confidentiality
22 agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the
24 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
25 reasonably specific description of the information requested; and

26 (3) make the information requested available for inspection by
27 the Non-Party, if requested.

28 (c) If the Non-Party fails to seek a protective order from this court

1 within 14 days of receiving the notice and accompanying information, the Receiving
2 Party may produce the Non-Party's confidential information responsive to the
3 discovery request if such production would be permitted under the terms of the
4 confidentiality agreement with the Non-Party. If the Non-Party timely seeks a
5 protective order, the Receiving Party shall not produce any information in its
6 possession or control that is subject to the confidentiality agreement with the Non-
7 Party before a determination by the court. Absent a court order to the contrary, the
8 Non-Party shall bear the burden and expense of seeking protection in this court of its
9 Protected Material.

10 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
12 Protected Material to any person or in any circumstance not authorized under this
13 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
14 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
15 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
16 persons to whom unauthorized disclosures were made of all the terms of this Order,
17 and (d) request such person or persons to execute the "Acknowledgment and
18 Agreement to Be Bound" that is attached hereto as Exhibit A.

19 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
20 **PROTECTED MATERIAL**

21 When a Producing Party gives notice to Receiving Parties that certain
22 inadvertently produced material is subject to a claim of privilege or other protection,
23 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
24 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
25 may be established in an e-discovery order that provides for production without prior
26 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
27 parties reach an agreement on the effect of disclosure of a communication or
28 information covered by the attorney-client privilege or work product protection, the

1 parties may incorporate their agreement in the stipulated protective order submitted to
2 the court.

3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
13 only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. If a Party's request to file Protected Material
15 under seal is denied by the court, then the Receiving Party may file the information in
16 the public record unless otherwise instructed by the court.

17 **13. FINAL DISPOSITION**

18 After the final disposition of this Action, as defined in paragraph 4, within 60
19 days of a written request by the Designating Party, each Receiving Party must return
20 all Protected Material to the Producing Party or destroy such material. As used in this
21 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected
23 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
24 must submit a written certification to the Producing Party (and, if not the same person
25 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
26 category, where appropriate) all the Protected Material that was returned or destroyed
27 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
28 compilations, summaries or any other format reproducing or capturing any of the

Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. VIOLATIONS

Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

CARTER SCHOLER PLLC

TONKON TORP LLP

/s/ J. Robert Arnett

/s/ Michael C. Willes

J. Robert Arnett, Pro Hac Vice

Michael C. Willes, SBN No. 273145

Dated: March 21, 2017

Steven M. Wilker

Frank J. Weiss

Dated: March 21, 2017

Attorneys for Plaintiffs

Attorneys for Defendants Cosway

USA, Inc.; Glen Jensen and Jeffrey

N. Aldous

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ATTESTATION

I hereby attest, pursuant to Local Rule 5-4.3.4., that the other signatory listed, and on whose behalf the filing is submitted, concurs in the filing's content and has authorized filing.

Dated: March 21, 2017.

TONKON TORP LLP

/s/ Michael C. Willes

Michael C. Willes, SBN No. 273145

Steven M. Wilker

Frank J. Weiss

Attorneys for Defendants Cosway USA, Inc.; Glen Jensen; and Jeffrey N. Aldous

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

/ s /

DATED: March 22, 2017

Honorable Alka Sagar

United States Magistrate Judge

037410/00003/7860700v1

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty or perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Central
District of California on _____ [date] in the case of *Evolv
Health, LLC and Evolvhealth Mexico Servicios, S. de R.L. de C.V.*, Plaintiffs v.
*Cosway USA, Inc., d/b/a Ecosway USA, Inc., Glen Jensen, Jeffrey N. Aldous and
Vincent Tan*, Defendants, United States District Court for the Central District of
California, Western Division, Case No. 2:16-cv-01602(ODW). I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order. I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____
[print or type full name] of _____ [print or
type full address and telephone number] as my California agent for service of process
in connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____